BOHJARAJ KASINATHAN

v.

NAGARAJAN VERAPPAN & ANOR

HIGH COURT MALAYA, TEMERLOH
RAMLY ALI JC
[CIVIL APPEAL NO: 11-49-2000]
16 MAY 2001

TORT: *Vicarious liability - Assault by servant in course of employment - Whether committed in normal course of employment - Establishment of causal link between injuries sustained and misconduct of employee - Aggravated damages*

TORT: *Damages - Aggravated damages - Considerations - No order for special and exemplary damages - Whether due weight and consideration given to injuries mentioned in medical report - Appeal against quantum of damages*

At all material times the appellant was a passenger on a bus operated by the second respondent and on which the first respondent was employed as a bus conductor. The appellant instituted proceedings for aggravated and general damages against the respondents for injuries sustained as a result of an assault on his person by the first respondent. The court below found the first respondent wholly liable but held the second respondent not vicariously liable and dismissed the appellant's claim against the second respondent. The appellant appealed against the magistrate's decision in respect of the second respondent and on the inadequacy of damages.

The appellant contended that the first respondent's unlawful assault was within the scope of his employment, and the second respondent as the employer should be held vicariously liable. On aggravated damages the appellant argued that the magistrate had failed to accord due weight to the true extent of the appellant's injuries as per the medical report. The respondents argued that the appellant had failed to establish the nexus between the injuries sustained and the assault to warrant aggravated damages.

Held:

[1] Interference in the findings of the court below should only be resorted to where the trial judge has erred in principle and law or has not taken into account relevant considerations. In the instant case the magistrate's finding that the first respondent was wholly liable for the assault was neither disputed nor challenged. There was no evidence to indicate a manifest error on the part of the magistrate in arriving at his findings to warrant appellate interference.

[2] The second respondent as employer and master was not only responsible for what he had authorised the first respondent to do in the course of his employment, but also for the way he went about doing it. The magistrate had erred in the application of the relevant principle of law to the facts. By his own admission, the first respondent was duty bound to maintain order and discipline in the bus. He was responsible for the general welfare, well being and safety of the passengers in the bus. Notwithstanding that the first respondent had achieved this end by improper means far exceeding any authority, express or implied, rested on him, the second respondent was nevertheless vicariously responsible for the unlawful conduct of his servant.

[3] Aggravated damages constitute part and parcel of general damages and there is no need for it to be specifically pleaded. By virtue of his standing as chairman of a local temple, the appellant was entitled to a modicum of self respect and dignity befitting the status of his office. The physical assault on his person in public was not only humiliating but an affront to his personal pride and self esteem. The magistrate had erred in not awarding the appellant aggravated damages.

[4] In the award for general damages, the magistrate had erred in holding that the appellant had failed to establish the causal link between the injuries sustained and the assault. The medical report, the contents and admissibility of which were neither challenged nor disputed, included "blurring of vision "and "macula oedema" which should have been taken into account and accorded due weight and consideration in the assessment of the general damages to be awarded.

[Second defendant vicariously liable; RM10,000 for aggravated damages and RM5,000 for general damages.]

Case(s) referred to:

Ansell v. Thomas [1974] Crim LR 31 ***(foll)***
Broome c Cassel & Co [1972] AC 1027 ***(foll)***
Canadian Pacific Railway Co v. Lockhart [1942] AC 591 ***(refd)***
Dyer & Wife v. Munday & Anor [1895] 2 QB 742 ***(foll)***
Goh Choon Seng v. Lee Kim Soo [1925] AC 550 ***(foll)***
Ilkiw v. Samuel [1963] 3 All ER 886 ***(refd)***
Jefferson v. Derbyshire Farmers Ltd [1921] 2 KB 281 ***(refd)***
Keppel Bus Co Ltd v. Sa'ad Ahmad [1972] 2 MLJ 121 ***(dist)***
Marsh v. Mooves [1949] 2 All ER 27 ***(refd)***
Motor Sports International v. Delcont [1996] 3 CLJ 483 ***(refd)***
Roshairee Abd Wahab v. Mejar Mustafa Omar [1997] 1 CLJ Supp 39 ***(foll)***

Other source(s) referred to:
Salmond on Torts, 9th edn, p 95
Salmond on Torts, 13th edn, art. 36, p 122

For the appellant - M/s Zuki; Ghandi & Amin
For the respondent - M/s Shui-Tai

Reported by K Ganesh

JUDGMENT

Ramly Ali JC:

Introduction

This is an appeal by the appellant/plaintiff against the decision of the learned magistrate of Temerloh Pahang made on 14 November 2000. In that decision the learned magistrate had found that the first defendant was wholly (100%) to be blamed for the injury suffered by the plaintiff and that the plaintiff's claim against the second defendant be dismissed with costs on the grounds that the second defendant was not vicariously liable for the act of the first defendant. The learned magistrate also ordered that the first defendant to pay the plaintiff a sum of RM4,000 as general damages. The order also made specific mention that there was no order for special damages and exemplary damages. The plaintiff now is appealing against the whole decision against the second defendant and on quantum against the defendants. The first defendant did not appear in this appeal.

Facts Of The Case

The plaintiff was, at all material times, a passenger on a bus operated by the second defendant, The Pahang South Union Omnibus Company Berhad. The first defendant, at that material time was a bus conductor employed by the second defendant. On 1 July 1997 at 6.30pm, the plaintiff boarded the bus no: CL 3490. The first defendant was the bus conductor then. While in the bus, the first defendant had assaulted the plaintiff by punching him using a knuckleduster (buku lima). As a result of the assault the plaintiff suffered the following injuries ie, soft tissue injury; lacerated wound 3 x 3cm and haematoma – above right eye, tender between both eyes; blurring of vision in right eye (macula oedema). The plaintiff also suffered loss of income. The plaintiff brought an action claiming damages against both the first defendant and also the second defendant as vicariously liable for the wrong committed by its servant.

The Appeal

The Appellant is not satisfied with the findings of the learned magistrate in dismissing his claim against the second defendant on the ground that the plaintiff had failed to prove that the second defendant was vicariously liable for the wrongful conduct of the first defendant. The learned magistrate ruled that the first defendant's act in assaulting the plaintiff while he was travelling in the said bus was not within the job responsibility of the first defendant and thus was not sanctioned by the second defendant, at any time. On the question of quantum of damages, the plaintiff contended that the learned magistrate had failed to take into account injuries on "blurring of vision" and "macula oedema" as well as on aggravated damages.

Appellant's Arguments

The appellant argued that the second defendant, being employer of the first defendant, at the material time, should be held vicariously liable for the wrongful conduct of the first defendant committed in the course of his employment. The plaintiff contended that since part of the first defendant's duties as a bus conductor is to maintain order and discipline of passengers travelling in the bus (as admitted by the first defendant in his testimony), the first defendant's conduct in punching and assaulting the plaintiff must be considered to be within the scope of his employment. Thus the second defendant must be held to be vicariously liable for such a conduct.

As to the issue of aggravated damages, the plaintiff argued that even though he is not a person holding a high post with high salary, the plaintiff, 46 years old, being chairman of the local temple, was still entitled to aggravated damages as he had been humiliated by the first defendant in public. The plaintiff also contended that he should be awarded general damages for "blurring of vision" and "macula oedema", as the injuries were included in the medical reports (P3) which had been accepted and admitted as evidence.

Respondent's Argument

The second defendant/respondent admitted employing the first defendant as a bus conductor but denied liability on the ground that the assault was not within the scope of the bus conductor's authority and was an independent act unconnected with his employment.

On the question of "aggravated damages" the respondent contended that the claim was not specifically pleaded by the appellant. As to the general damages on "blurring of vision" and "macula oedema", the respondent argued that the appellant had failed to prove the nexus between the injuries to the said assault by the first defendant.

Detailed Facts Of The Incident

The evidence showed that on the day in question the plaintiff had boarded the bus at 6.30pm. After travelling for about 2km, the bus stopped. A few school children boarded the bus. Some of the school children could not get a seat as the bus was full. About five - six of them were standing near the plaintiff's seat. On seeing this, the first defendant asked the school children to move inside and to sit down. The school children failed to respond as there were no vacant seats available at that time. Then, the first defendant shouted at them, using vulgar and abusive words, asking the school children to move inside and to sit down. The first defendant repeated the words "Hoi, anak haram duduk" a few times. On hearing this, the plaintiff commented and asked the first defendant as to why he (first defendant) shouted at the school children using vulgar and abusive words as there were no more vacant seats available at that time. Apparently the first defendant got angry and challenged the plaintiff for a fight. There were exchanges of words between the first defendant and the plaintiff. He then moved slowly towards the plaintiff who was still seated, took out something from his pocket (which was later found out to be a knuckleduster) and punched the plaintiff's head. The first defendant then pulled the plaintiff's collar and pushed him down. The driver of the bus (PW2) stopped the bus to intervene. Later the plaintiff lodged a police report. According to PW2 (the bus driver) he saw the first defendant punched and pushed the plaintiff. PW2 did not see the plaintiff punching the first defendant at any time.

On the evidence adduced, the learned magistrate found that the first defendant was wholly (100%) liable in assaulting the plaintiff.

Exercises Of Appellate Jurisdiction

The first issue that need to be stressed here is that to what extent this court, in exercising its appellate jurisdiction, can interfere with the findings of the learned magistrate in this case. It is well-settled law that in exercising its appellate jurisdiction, this court can only interfere in the findings or decision of the learned magistrate when the learned magistrate has erred in principle and law, or has taken into account an irrelevant consideration, or has failed to take into account a relevant consideration when arriving at his decision, or that the decision made had caused an injustice (see: *Motor Sports International v. Delcont* [1996] 3 CLJ 483).

Counsel for the respondent submitted that the learned magistrate had made his decision after hearing all the witnesses during the trial. He was in the best position to evaluate the weight of the evidence given by those witnesses. He is the best person to decide based on the evidence before him, which of the stories to believe. He had the benefit of seeing and observing the witnesses

and their demeanour. So, in the absence of manifest error on part of the learned magistrate, it is submitted that his findings should not be disturbed by this court.

In this case, the learned magistrate, at the end of the trial had decided that the first defendant was to be wholly (100%) liable for the assault on the plaintiff. That finding is not disputed or challenged in this appeal. There is also nothing to show that the learned magistrate had erred in coming to that decision. Thus, it is not proper for this court to disturb the said decision.

The subject matter of this appeal is on the question of vicarious liability of the second defendant over the wrongful conduct of the first defendant in assaulting the plaintiff in the course of his employment with the second defendant. Based on the evidence which had been admitted and accepted by the learned magistrate, the issue to be determined is whether the second defendant (respondent) was vicariously liable for the wrongful conduct of the first defendant. In deciding the issue, the learned magistrate has to exercise his mind and to apply the existing laws and principles on vicarious liability to the facts of this case. This was not based entirely on the demeanour of the witnesses and therefore the appellate court is in as good a position or as bad a position as the learned magistrate to decide on the issue. In this respect I am satisfied that the learned magistrate had not properly exercised his mind on the issues before him. As such, it would be unreasonable and unjust for this court not to interfere with the findings on the issue of vicarious liability of the second defendant (respondent).

Decision Of The Learned Magistrate On The Issue

The learned magistrate had concluded that the plaintiff had failed to prove that the second defendant (respondent) was vicariously liable on the ground that the first defendant's conduct in assaulting the plaintiff was not an act authorised by the second defendant. He cited the case of *Roshairee bin Abd. Wahab v. Mejar Mustafa bin Omar* [1997] 1 CLJ Supp 39 as an authority. He also found that the conduct of the first defendant was not within the authorities' responsibility of the first defendant as a bus conductor. However, the learned magistrate conceded in his grounds of judgment that one of the duties of the first defendant (as testified by the first defendant personally) is the maintenance of order and discipline in the bus.

The Applicable Laws

As early as 1895, Lord Esher MR in *Dyer and Wife v. Munday and Another* CA [1895] 2 QB 742, had ruled that:

> The liability of a master does not rest merely on the question of authority, because the authority given is generally to do the master's business rightly; but the law says that if, in the course of carrying out his employment, the servant commits an excess beyond the scope of his authority, the master is liable.

In the same case, Lopes LJ had said:

> The law says that for all acts done by a servant in the conduct of his employment, and in furtherance of such employment, and for the benefit of his master, the master is liable, although the authority that he gave is exceeded.

It was also held in that case that the mere fact that the assault was a criminal offence, and not only a tortious act, did not affect the liability of the master for the act of his servant.

The general principles ruling a case of this type were laid down in *Salmond on Torts*, 9th edn, p. 95, namely:

> It is clear that the master is responsible for acts actually authorised by him: for liability would exist in this case, even if the relation between the parties was merely one of agency, and not one of service at all. But a master, as opposed to the employer of an independent contractor, is liable even for acts which he has not authorised, provided they are so connected with acts which he has authorised that they, may rightly be regarded as modes – although improper modes – of doing them. In other words, a master is responsible not merely for what he authorises his servant to do, but also for the way in which he does it ... On the other hand, if the unauthorised and wrongful act of the servant is not so connected with the authorised act as to be a mode of doing it, but is an independent act, the master is not responsible: for in such a case the servant is not acting in the course of his employment, but has gone outside of it.

The above principles were followed in *Marsh v. Mooves* [1949] 2 All ER 27; *Canadian Pacific Railway Co. v. Lockhart* [1942] AC 591 (Privy Council); *Keppel Bus Co. Ltd. v. Sa'ad bin Ahmad* [1972] 2 MLJ 121; (Privy Council) [1974] 1 MLJ 191; and *Roshairee Abd. Wahab v. Mejar Mustafa Omar & Ors* [1997] 1 CLJ Supp 39.

In *Goh Choon Seng v. Lee Kim Soo* [1925] AC 550, the Privy Council ruled that where a servant is doing some work which he is appointed to do, but does it in a way which his master has not authorised and would not have authorised, had he known of it, the master is nevertheless responsible.

In the above principles, the expression "course of employment" is very vital for consideration. Rigby LJ, in *Dyer and Wife v. Munday & Another (supra)* clarified that:

> The law on the matter was laid dawn by Willes J in *Bayley v. Manchester, Sheffield, and Lincolnshire Ry. Co.* (1): "A person who puts another in his place to do a class of acts in his absence necessarily leaves him to determine, according to the circumstances that arise, when an act of that class is to be done, and trusts him for the manner in which it is done; and consequently he is held answerable for the wrong of the person so entrusted either in the manner of doing such an act, or in doing such an act under circumstances in which it ought not to have been done; provided that what was done was done, not from any caprice of the servant, but in the course of the employment.

Lord Kilbrandon in *Keppel Bus*'s case *(supra)* held that "the course of employment" is not limited to the obligations which lie on an employee by virtue of his contract of service. It extends to acts done on the implied authority of the master.

According to *Salmond On Torts,* 13th edn, art. 36, at p. 122:

> A master is not responsible for a wrongful act done by his servant unless it is done in the course of his employment. It is deemed to be so done if it is either (i) a wrongful act authorised by the master, or (ii) a wrongful and unauthorised mode of doing same act authorised by the master.

It has also been decided by the Privy Council in *Keppel Bus*'s case *(supra)* that each case on this branch of the law (vicarious liability) must stand upon its own facts. The principles established by the above authorities on this matter is clear and plain, but the difficulty lies in its application to particular facts of each case. This difficulty was admitted by Diplock LJ in *Ilkiw v. Samuel* [1963] 3 All ER at p. 886; and Bankes LJ in *Jefferson v. Derbyshire Farmers Ltd.* [1921] 2 KB 281.

In our present case, I am of the view that the learned magistrate had erred in not properly applying the relevant principle of law to the facts of this case. Here, the first defendant personally admitted in evidence that one of his duties as a bus conductor in the employment of the second defendant is the maintenance of order and discipline of passengers in the bus. The manager of the second defendant (DW1) also testified that the first defendant was supposed to be in-charge of the safety of the passenger in the bus. He went on to say that the second defendant never gave authority to the first defendant to use abusive language or to use force when performing his duties. The first defendant also cannot invade the passenger. According to DW1, if any passenger refuse to follow his instruction, the first defendant may push the bell and ask the passenger to step down or to get help from the nearest police station.

It is not disputed that the assault on the plaintiff by the first defendant took place while the first defendant was in the course of his employment as a bus conductor and the plaintiff was a passenger of the said bus. It is also not disputed that the incident started when the first defendant had asked some school children (who were then standing in the bus) to move inside and to sit down. When the children refused, the first defendant shouted at them by uttering abusive and vulgar words. The plaintiff, who was seated nearby took exception and questioned the first defendant as to why he shouted abusive and vulgar words to the school children. The first defendant got angry. Then there were exchanges of words between the first defendant and the plaintiff. Then the first defendant challenged the plaintiff for a fight, which the plaintiff declined. Finally, the first defendant moved towards the plaintiff and punched the plaintiff, apparently using a knuckleduster. The facts showed that there were some degree of tension among the passengers in the bus. It can be inferred that the situation required the first defendant as the conductor of the bus to exercise his duty to get all passengers to move inside and to sit down and to maintain order in the bus. The first defendant has done it, but he had exceeded his authority by using abusive and vulgar words and also by using force. To my mind, the first defendant's conduct in assaulting the plaintiff is so closely connected with the acts which he was authorised (ie, to maintain order in the bus), that it may rightly be regarded as modes – although improper modes – of doing it. Thus, applying the authorities cited above I am satisfied that the second defendant was vicariously liable for the said conduct of the first defendant.

In *Roshairee Abd. Wahab v. Mejar Mustafa Omar & Ors (supra),* the plaintiff was ragged and assaulted by the first two defendants while undergoing an orientation programme shortly after reporting for duty with the Royal Malay Regiment. The first defendant was the officer in charge of the orientation programme. The plaintiff also claimed damages against the third defendant, the Government of Malaysia, by way of vicarious liability for the first two defendants. Applying the same principle of law as stated in *Salmond On Torts,* James Foong J held that even though ragging among officers was expressly prohibited and the first defendant's acts of assault were unauthorised by the third defendant, they were carried out during the normal course of duty of the first defendant. Such being the case, his unauthorised acts have become so connected with his authorised acts that the court (in that case) found them to have become "modes – although improper modes – of doing them". Thus the third defendant was held vicariously liable for the unlawful actions of the first defendant. The relevant test applied by James Foong J in the above case is that the actions were "carried out during the normal course of duty" of the first defendant. In our present case, the same test should also apply ie, that the action of the first defendant in assaulting the plaintiff was carried out during the normal course of his duty as a bus conductor, at the material time.

The second defendant operates a bus service for the public within the locality. The service is meant for the members of the public. Any member of the public may stop the bus and upon payment of necessary fares, make use of the service provided. Therefore, the second defendant should be held responsible for the safety of the passengers while travelling in the bus, not only from interference by third party but also from any misbehaviour or misconduct of its own servant either the driver or the conductor of the bus. The second defendant should not be allowed to escape liability that arises from the conduct of the servant just by saying that the servant was not authorised to commit the conduct. In this respect I fully agree with the remarks made by the trial judge in *Keppel Bus*'s case which was cited by the Court of Appeal (Singapore) [1972] 2 MLJ 121:

> A bus conductor's lot is quite often a very harassing one especially in a busy metropolis and particularly during peak hours of traffic. He is often, in the proper discharge of his duties, called upon to show qualities of patience, tolerance, fact and forbearance. In the course of his duties he will have to deal with all kinds of passengers.
>
> Apart from collecting the appropriate fares from the passengers and seeing that they get in and alight from the bus properly he is also responsible for the maintenance of order in the bus and the general welfare of all the passengers. Bus companies should take good care to see that people with the wrong temperament are not employed by them in this capacity. Otherwise they may run the risk of having to meet situations such as this.

The counsel for the respondent (second defendant) argued that the decision in *Keppel Bus Co. Ltd.'s (supra)* should be applicable to the present case. In that case the plaintiff, a passenger in a bus belonging to the defendant's company, was assaulted by the conductor of the bus, a servant of the defendant. The Privy Council, in reversing the decisions of the trial court and Court of Appeal in Singapore, held that there was no evidence which would justify the ascription of the act of the conductor to any authority, express or implied, rested in him by the defendant. It was therefore held that the defendant was not vicariously liable for the conduct of the conductor in assaulting the plaintiff.

As had been stated earlier that each case must depend on its own facts, Lord Kilbrandon in the above case itself, had stated so. Facts may differ from one case to another. Thus, a finding of facts in one case may not necessarily be applicable to another case even though the same principle of law applies. In *Keppel Bus*'s case *(supra)*, Privy Council found that, upon the facts, even though it may be accepted that the keeping of order among the passengers was part of the duties of the conductor, but there was no evidence of disorder

among the passengers at the time of the assault. Thus there was no evidence to show an emergency situation calling for forcible action on the part of the conductor.

The facts of that case can be distinguished from the facts of our present case. In that case (*Keppel Bus*'s case) at one point of the journey an elderly Malay lady indicated that she wanted to get off the bus. The conductor ordered her "in a loud and rude manner" to go and wait near the exit. The plaintiff who was a passenger in the bus, took exception to this instruction and the manner in which it was given; he demonstrated that it was not safe for the lady to stand by the exit, which was at the entrance. An altercation broke out between him and the conductor, in the course of which each tried to hit the other. Other passengers intervened and separated them. The bus stopped, the lady got off and some passengers got on. The conductor began collecting fares as usual. As he did so, he abused the plaintiff using a very rude expression. The plaintiff stood up and asked the conductor not to use abusive language; he then sat down. After he had sat down the conductor struck him in the eye with the ticket-punch, breaking his glasses, and causing the loss of the sight of the eye.

From the facts given, it is clear that there was a lapse of time between the incident of the treatment of the Malay lady by the conductor and the incident when the conductor struck the plaintiff. The Malay lady had by then, left the bus; normalcy has been restored, except, apparently for some simmering resentment in the conductor which caused him to misbehave himself. Thus, in the circumstances, the conductor cannot be said to be quelling disorder when he struck the plaintiff, as there was no disorder that ever existed at that time. The situation has gone back to normal.

However, in our present case, there was no lapse of time or gap between the first defendant's conduct in asking the school children to move inside the bus and to sit dawn up to the time when he punched the plaintiff. The incidents were so closely connected so as to form one transaction or one incident. Tension was building up when the plaintiff intervened and later when there were exchanges of words between them. There was already signs of imminent disorder cropping up at that time. Then, the assault followed immediately.

On those premises, I am satisfied that the findings of fact in *Kepple Bus*'s case do not apply to our present case. Each case stands on its own facts.

Quantum Of Damages

On the question of quantum of damages, the appellant (plaintiff) raised two issues, namely:

i) that the learned magistrate had erred in law and fact for not awarding the appellant aggravated damages; and

ii) that the learned magistrate had erred in law and fact for not awarding general damages on "blurring of vision" and "macula oedema".

Aggravated Damages

The learned magistrate made no award and no mention about aggravated damages in his judgment. It is trite law that "aggravated damages" are part of the general damages and thus need not be specifically pleaded. It is sufficient for the plaintiff to plead "general damages" in his statement of claim to enable him to claim "aggravated damages". In assessing "aggravated damages" the court has to consider all the relevant circumstances of the case including the character of the parties involved.

In *Broome c. Cassel & Co* [1972] AC 1027 at p. 1124, Lord Diplock described aggravated damages as:

> Compensation for the injured feelings of the plaintiff where the sense of injury resulting from wrongful physical act is justifiably heightened by the manner in which or motive for which the defendant did it.

In *Ansell v. Thomas* [1974] Crim. LR 31 Edmund Davis LJ held that aggravated damages is to compensate the plaintiff for injuries affecting his feelings arising out of the tortious acts of the defendants and in assessing this all the circumstances of the case must be taken into account, including the character of the plaintiff.

In *Roshairee Abd. Wahab*'s case *(supra)*, the court accepted the submission that aggravated damages can be awarded within the category of compensatory damages. The court further ruled that:

> In the opinion of this Court, the Plaintiff may at the material time be weaker, less experience and lower in rank to the 1st and 2nd defendants, but he was entitled, as all young officers do to self respect and dignity. By the acts of the 1st and 2nd defendants he has suffered humiliation, loss of pride and self esteem. Instead of being encouraged, advised and protected by these two seniors, the Plaintiff was insulted and assaulted by them. To compensate the plaintiff for the injury to his feelings, this Court awards a sum of RM50,000 as aggravated damages.

In our present case, I am also of the opinion that the plaintiff is entitled to aggravated damages. The plaintiff, although not holding any high post with high salary, was the chairman of the local temple at the time of the incident. This was clearly stated by PW2 – the driver of the bus. Thus, he was entitled to self respect and dignity. By the acts of the first defendant the plaintiff has

suffered humiliation, loss of pride and self esteem. To compensate the plaintiff for the injury to his feelings, this court awards him a sum of RM10,000 as aggravated damages. To my mind this sum is fair and reasonable after taking into consideration all the relevant factors particularly the status of the plaintiff in his community.

General Damages On "Blurring Of Vision" And "Macula Oedema"

For general damages, the learned magistrate awarded the plaintiff a sum of RM4,000 for "laceration" and "haematoma". The learned magistrate did not make any award for "blurring of vision" and "macula oedema". In his grounds of judgment, the learned magistrate said that he did not make any award for "blurring of vision" because the plaintiff had failed to establish the nexus between the said injury and the assault by the first defendant.

The injuries "blurring of vision" and "macula oedema" were stated in the Medical Report – P3. The said medical report had been accepted as evidence and marked as P3. From the report, it appears that the plaintiff had complained of "blurring of vision" over right eye after the assault. He was then referred to Eye Clinic on 22 July 1997. On checking, it was found that there was mild oedema in macula area. Thus the doctor had formed an impression that there was macula oedema on the right eye. There is no indication that the second defendant (respondent) had objected to the admissibility of the Medical Report. Neither was there any indication that the respondent had disputed the contents of the said report. Thus, the said injuries should be taken into account in assessing general damages by the learned magistrate. I accordingly award RM5,000 to the plaintiff for the said injuries.